Tenaga Nasional Bhd v Teck See Plastic Sdn Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO D6–22–3211 OF 1998
SITI MARIAH AHMAD J
25 JUNE 2007

Contract — Goods sold and delivered — Claim for payment — Plaintiff installed a faulty meter system causing the meter to record lesser units of electricity — Whether plaintiff entitled to claim from defendant for 'under billed' electricity consumption — Whether plaintiff entitled to claim from defendant an estimated amount instead of a an actual amount — Whether right at law that defendant should be burdened with loss as a result of using electricity which had already been sold and delivered — Licensee Supply Regulations 1990

Public Utilities — Electricity — Charges for electricity — Plaintiff formerly a statutory body — Whether rights and liabilities of statutory body transferred to plaintiff — Meter installed was faulty causing the meter to record lesser units of electricity — Whether plaintiff entitled to claim from defendant for 'under billed' electricity consumption

On 15 August 1990, the plaintiff installed a meter at the defendant's factory to record the electricity consumed by the factory. On 11 July 1996, the plaintiff discovered that the meter installed was faulty which caused the meter to record lesser units of electricity consumed at the defendant's factory. The plaintiff had all this while billed the defendant monthly and the defendant had duly paid the bills. The plaintiff had made an estimate loss calculation of RM2,270,209.70 for the said irregularities of the meter for the period from September 1990 to August 1996 and demanded the same from the defendant. The defendant contended that the plaintiff was formerly known as Lembaga Letrik Negara Tanah Melayu, a statutory body incorporated under s 3 of the Electricity Act 1949. The Electricity Act 1949 was repealed and replaced by the Electricity Supply Act 1990. The plaintiff thereon was no longer a statutory body. The defendant's said the plaintiff ought to have known that the defendant would price the manufactured products for sale to its customers by taking into account the cost of electricity consumed in the manufacture of the products. It would not be equitable to burden the defendant with the alleged loss suffered by the plaintiff. The defendant admits there were irregularities in the metering system but that these irregularities were caused by the negligence of the servants or agents of the plaintiff who had changed the metering system by installing a meter system which was defective. The plaintiff was also time barred under s 6 Limitation Act 1953. The main issues for determination were: i) whether it was right at law that the defendant should burden the loss of RM2,270,209.70 as a result of using electricity which have already been sold and delivered; ii) whether the plaintiff was entitled to claim from the defendant for an alleged 'under billed' electricity consumption due to the wrongful installation of the meter by the plaintiff's servants or/agents at the defendant's premises; and iii) whether the plaintiff's claim was time barred.

Held, allowing the plaintiff's claim:

(1) LLN was entitled to claim from the consumer any amount undercharged for electricity energy supplied notwithstanding that the undercharging was due to error or mistake by LLN and/or its agent/servant (see *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58). The Electricity Supply Act 1990 (Act 447) and the Electricity Supply (Successor Company) Act 1990 both came into force on 1 September 1990. All rights and liabilities to which LLN as entitled to or subject to immediately before 1 September 19900 arising from the contract were transferred to the plaintiff. Thus the right enjoyed by LLN under the laws of Malaysia immediately prior to 1 September 1990 was vested in the plaintiff by virtue of s 3 of the Electric Supply (Successor Company) Act 1990. Therefore it was right at law that the defendant should burden the loss of RM2,270,209.70 as a result of using electricity which had already been sold and delivered (see paras 28–29).

(2) The Licensee Supply Regulations 1990 (the Regulations) permits the plaintiff to raise a claim against the defendant for the amount undercharged for the supply of electrical energy as stated in a similar unreported High Court case of *Hock Seng Company Sdn Bhd v Tenaga Nasional Berhad* [2000] MLJU 571. It must however be noted that the amended r 11(2) of the Regulations only allowed undercharging of not more than three months from the date the consumer had been informed about being undercharged which came into force only on 15 December 2002 after this suit was filed and hence after the present cause of action arose. The amendment should be construed as a prospective and not retrospective provision. It was therefore clear that, at the time of breaches complained by the plaintiff the earlier rule would still be applicable (see paras 32–33, 35–36).

(3) The date which the plaintiff's cause of action accrued was on the date when the defendant denied liability (see *Tan Boon Yen dan Lain-Lain lwn Maybank General Assurance Bhd* [2003] 5 MLJ 315). According to the defendant the breach accrued in September 1990 from which the date the plaintiff claimed for the alleged under billed amount. Nevertheless, this was not the date when the breach occurred but rather when the damage occurred. The court opined that the breach occurred on 12 June 1998 when the defendant's solicitors informed the plaintiff's solicitors that the defendant was denying liability to pay the undercharged sum. Since the action was filed by the plaintiff on 5 September 1998, the action was not time barred (see paras 42–44).

[Bahasa Malaysia summary

Pada 15 Ogos 1990, plaintif telah memasangkan satu meter di kilang defendan untuk merekodkan elektrik yang digunakan oleh kilang tersebut. Pada 11 Julai 1996, plaintif mendapati bahawa terdapat kecacatan pada meter yang dipasang yang menyebabkan meter tersebut merekodkan lebih berkurangan unit elektrik yang digunakan di kilang tersebut. Plaintif telah pada kesemua masa menghantar bil bulanan kepada defendan dan defendan telah membayar bil-bil tersebut. Plaintif telah membuat satu pengiraan anggaran kehilangan sebanyak RM2,270,209.70 untuk kecacatan meter tersebut dari tempoh September 1990

sehingga Ogos 1996 dan menuntut jumlah tersebut daripada defendan. Defendan menegaskan bahawa plaintif dahulunya dikenali sebagai Lembaga Letrik Negara Tanah Melayu, sebuah pertubuhan berkanun yang ditubuhkan di bawah s 3 Akta Elektrik 1949. Akta Elektrik 1949 dimansuhkan dan diganti oleh Akta Bekalan Elektrik 1990. Plaintif dengan itu bukan lagi satu pertubuhan berkanun. Defendan menyatakan bahawa plaintif sepatutnya mengetahui bahawa defendan akan menetapkan harga barangan yang dijual kepada pelanggannya dengan mengambil kiraan kos elektrik yang digunakan dalam menghasilkan barangan tersebut. Ia adalah tidak berekuiti untuk membebankan defendan dengan kehilangan yang dikatakan di alami oleh plaintif. Defendan mengakui bahawa terdapat kecacatan pada sistem meter tersebut tetapi kecacatan ini disebabkan oleh kecuaian pekerja-pekerja atau agen-agen plaintif yang telah menukarkan sistem meter dengan memasangkan satu sistem yang cacat. Plaintif juga dihadkan masa di bawah s 6 Akta Had Masa 1953. Isu-isu utama untuk diputuskan ialah: (i) sama ada ia adalah betul di segi undang-undang bahawa defendan patut dibebankan dengan kehilangan RM2,270,209.70 hasil dari menggunakan elektrik yang telahpun dijual dan dihantar-serah; (ii) sama ada plaintif berhak menuntut daripada defendan untuk satu 'bil berkurangan' elektrik yang dipakai yang diakibatkan oleh pemasangan yang salah meter oleh pekerja-pekerja atau agen-agen plaintif di premis defendan; dan (iii) sama ada tuntutan plaintif telah luput had masa.

Diputuskan, membenarkan tuntutan plaintif:

(1) LLN berhak menuntut daripada pengguna sebarang jumlah dimana caj berkurangan untuk tenaga elektrik yang dibekalkan walaupun caj berkurangan disebabkan oleh kesilapan LLN dan/atau pekerja-pekerja atau agen-agennya (*Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58). Akta Bekalan Elektrik 1990 (Akta 447) dan Akta Bekalan Elektrik (Syarikat Pengganti) 1990 kedua-duanya berkuatkuasa pada 1 September 1990. Kesemua hak-hak dan liabiliti-liabiliti yang LLN berhak kepada atau tertakluk kepada sebelum 1 September 1990 yang berbangkit daripada kontrak dipindahkan kepada plaintif. Dengan itu hak yang dinikmati oleh LLN di bawah undang-undang Malaysia sebelum 1 September 1990 diletakhak di plaintif mengikut s 3 Akta Bekalan Elektrik (Syarikat Pengganti) 1990. Dengan itu ia adalah betul di segi undang-undang bahawa defendan sepatutnya menanggung kehilangan RM2,270,209.70 dalam menggunakan eletrik yang telah dijual dan dihantar-serah (lihat perenggan 28–29).

(2) Peraturan-Peraturan Bekalan Pemegang Lesen 1990 (Peraturan tersebut) membenarkan plaintif menuntut terhadap defendan untuk amaun yang berkurangan untuk pembekalan tenaga elektrik seperti yang dinyatakan di satu kes yang tidak dilaporkan *Hock Seng Company Sdn Bhd v Tenaga Nasional Berhad* [2000] MLJU 571. Akan tetapi ia mesti diperhatikan bahawa k 11(2) pindaan hanya membenarkan caj berkurangan tidak lebih daripada tiga bulan dari tarikh pengguna dimaklumkan tentang caj berkurangan tersebut yang berkuatkuasa hanya pada 15 Disember 2002 selepas tindakan ini difailkan dan dengan itu selepas kausa tindakan ini berbangkit. Pindaan peruntukan sepatutnya disifatkan prospektif dan bukan kebelakangan. Dengan itu ia

adalah jelas bahawa, pada masa perlanggaran yang dikatakan oleh plaintif peruntukan yang terdahulu terpakai (lihat perenggan 32–33, 35–36).

(3) 3. Tarikh di mana kausa tindakan plaintif bermula adalah pada tarikh apabila defendan menafikan liabiliti (lihat *Tan Boon Yen dan Iain-Iain lwn Maybank General Assurance Bhd* [2003] 5 MLJ 315). Menurut defendan perlanggaran berlaku pada September 1990 iaitu tarikh plaintif menuntut di bawah jumlah yang dikatakan itu. Akan tetapi, ini bukannya tarikh bila perlanggaran berlaku tetapi bila kerosakan berlaku. Mahkamah berpendapat bahawa perlanggaran berlaku pada 12 Jun 1998 apabila peguamcara defendan memberitahu peguamcara plaintif bahawa defendan menafikan liabiliti untuk membayar jumlah yang dicaj berkurangan. Oleh kerana tindakan ini difailkan oleh plaintif pada 5 September 1998, tindakan tersebut tidak dihadkan masa (lihat perenggan 42–44).]

Notes

For a case on claim for payment of goods sold and delivered, see 3(2) *Mallal's Digest* (4th Ed, 2006 Reissue) para 3805.

For cases on charges for electricity, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2015–2018..

Cases referred to

Arab Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ong and other appellants [2003] 1 MLJ 567 (refd)

Hock Seng Company Sdn Bhd v Tenaga Nasional Berhad [2000] MLJU 571 (refd)

JR Munday Ltd v London County Council [1916] 2 KB 331 (refd)

Public Textiles Berhad v Lembaga Letrik Negara [1976] 2 MLJ 58 (refd)

Tan Boon Yen dan Iain-Iain lwn Maybank General Assurance Bhd [2003] 5 MLJ 315 (refd)

Legislation referred to

Electric Supply (Successor Company) Act 1990 s 3
Electricity Act 1949 (repealed) s 3
Electricity Supply Act 1990
Licensee Supply Regulations 1990 rr 3(1), 11(2), (3)
Limitation Act 1953 s 6

K Nayagam (ML Lam with him) (Skrine) for the plaintiff.
Joginder Singh (Joginder Singh) for the defendant.

Siti Mariah Ahmad J:

THE BACKGROUND FACTS

[1] The plaintiff at all material times sold and supplied electricity to the defendant's factory under Kontrak Bekalan Elektrik 31 May 1990 dated 23 June 1990 between the plaintiff and the defendant. The defendant manufactures plastic injection moulding parts for use in automobile, electrical and electronic parts.

[2] On 15 August 1990, the plaintiff installed a meter at the defendant's factory to record the electricity consumed by the factory. On 11 July 1996, the plaintiff discovered that the meter installed was faulty which caused the meter to record lesser units of electricity consumed at the defendant's factory.

[3] The plaintiff had all this while billed the defendant monthly and the defendant had duly paid the bills. The plaintiff had made an estimate loss calculation of RM2,270,209.70 for the said irregularities of the meter for the period from September 1990 to August 1996 and demanded the same from the defendant. The defendant fails to pay.

[4] Therefore the plaintiff prays for:

(i) a sum of RM2,270,209.70;

(ii) interest at the rate of 8% pa from 21 April 1998 to the date of full payment;

(iii) costs.

THE defendant'S DEFENCE

[5] The defendant in their defence contended that the plaintiff was formerly known as Lembaga Letrik Negara Tanah Melayu ('LLN'). LLN was a statutory body incorporated under s 3 of the Electricity Act 1949. The Electricity Act 1949 was repealed and replaced by the Electricity Supply Act 1990. The plaintiff thereon is no longer a statutory body.

[6] The defendant's said the plaintiff ought to have known that the defendant would price the manufactured products for sale to its customers by taking into account the cost of electricity consumed in the manufactured of the products. Goods were sold and payments received. It will not be equitable to burden the defendant with the alleged loss suffered by the plaintiff.

[7] The defendant admits there were irregularities in the metering system. These irregularities however were caused by the negligence of the servants or agents of the plaintiff who had changed the metering system by installing a meter system which was defective. The defendant has not committed any breach of contract or act or omission in tort, which are the basis for any claim for relief. By the plaintiff's own act of negligence, the plaintiff has caused its own loss.

[8] The defendant bills the plaintiff every month for the amount of electricity consumed which have been duly paid. The plaintiff has led the defendant to believe that the bills were accurate. By believing this, the defendant based these charges for the purpose of costing their manufactured products for sale to its customers. Therefore the plaintiff is estopped from claiming the said sum.

[9] The plaintiff is also time barred to bring this claim under s 6 of the Limitation Act 1953.

ISSUES FOR DETERMINATION

(i) whether it is right at law that the defendant should burden the loss of RM2,270,209.70 as a result of using electricity which have already been sold and delivered;

(ii) whether the plaintiff is entitled to claim from the defendant for an alleged 'under billed' electricity consumption due to the wrongful installation of the meter by the plaintiff's servants or/agents at the defendant's premises;

(iii) whether the plaintiff is entitled to claim from the defendant and estimated amount instead of a an actual amount;

(iv) whether the plaintiff was negligent in installing a faulty meter system so as to raise a set off; and

(v) whether the plaintiff's claim is time barred.

EVIDENCE OF WITNESSES

[10] A total of five witnesses were called to give evidence. The plaintiff in their case called upon three witnesses whereas the defendant in return called two witnesses.

The evidence of Mispani bin Sakiio (PW1)

[11] PW1 was the plaintiff's Customers Services Manager from 1996 until 1997. PW1 is currently a senior engineer in the plaintiff.

[12] As a Customers Services Manager, PW1 had to manage the plaintiff's accounts in Shah Alam. In the debit note from the plaintiff to the defendant, it is written that a recalculation will be made based on the pro rata usage of the defendant for electricity consumption amounting to RM2,935,587.88.

[13] PW1 testified that the pro rata calculation is one of the available methods of calculation for under billing. According to him another method is called the percentage calculation. He also said the amount would have been higher than RM2,935,587.88 had the percentage calculation been used. According to PW1 from the lab record it was only recorded 30.1% of supposed to be actual usage with error of 69.9%. PW1 agreed there was a mistake in the meter installation at the defendant's factory.

The evidence of Wan Md Nor bin Wan Ahmad (PW2)

[14] PW2 was the plaintiff's District Manager for Shah Alam from 1996 until 1997. PW2 is currently an engineer in the plaintiff.

[15] As a district manager, PW2 was responsible for the operations in Shah Alam including customers services. The debit note referred to by PW1 was made on instruction of PW2.

The evidence of Anuar bin Hanafiah (PW3)

[16] PW3 was the plaintiff's assistant manager for Selangor in 1996. PW3 is currently an engineer in the plaintiff.

[17] As an assistant manager, PW3 was responsible to check and investigate faulty meters, repair them and make estimated calculations on the loss incurred by the plaintiff. This was done by PW3 with regards to the defendant.

[18] PW3 also testified that during the installation, they do not know that the meter has defect. According to him only during routine inspection it was discovered the meter was defective. This witnesses also confirmed that the percentage of error was 69.9%.

The evidence of Lim Yaw Yew (DW1)

[19] DW1 is the senior accounting manager in the defendant and is responsible for all accounting and financial matters of the defendant.

[20] He testified that the cost of electricity used to run the machines is taken into account for direct costs. He also stated that all the products manufactured by the defendant had been sold to customers during September 1990 to August: 1996. DW1 said thus the defendant will not be able to recover the amount claimed for from their customers to whom products manufactured had been sold.

[21] Witness agreed that the percentage of cost of electricity in the product costing and pricing in 1992 to 1995 was around 3% to 5%. Witness also agreed that market forces such as state of economy, competition, quality of product, supply and demand play significant role in pricing. DW1 also agreed that market forces are more important than the cost of electricity.

The evidence of Boey Hon Mun (DW2)

[22] DW2 was the defendant's finance/administration manager from 1984 to 1994. DW2 was responsible for all accounting and financial and administrative matters.

[23] DW2 testified that the cost of electricity used to run the machines is taken into account for direct costs. All the products manufactured by the defendant had been sold to customers during September 1990 to August 1996. Thus the defendant will not be able to recover the amount claimed for from their customers to whom products manufactured had been sold.

FINDINGS OF THE COURT

Issue 1 — Whether it is right at law that the defendant should burden the loss of RM2,270,209.70 as a result of using electricity which have already been sold and delivered?

[24] The Electricity Supply Act 1990 (Act 447) and the Electricity Supply (Successor Company) Act 1990 both came into force on 1 September 1990. Section 3 of the Electric Supply (Successor Company) Act 1990 states that the 'Vesting of property, etc of the Board in the successor company, all properties, rights and liabilities to which the board was entitled to or subject to, were transferred to the plaintiff ie the successor company'. Rights and liabilities is explained in s 3(2) as 'rights which the Board is entitled to or, as the case may be, liabilities to which the board is subject to, whether under the laws of Malaysia or any country outside Malaysia'.

[25] Section 3(4) provides that 'every right and liability transferred... to the successor company may, on and after the transfer date, be sued on, recovered or enforced by or against the company in its own name...'.

[26] The Minister of Energy, Telecommunications and Posts declared the transfer date where all properties, rights and liabilities to which the board was entitled to or subject to, were transferred to the plaintiff as of 1 September 1990. Therefore all rights and liabilities to which LLN was entitled to or subject to immediately before 1 September 1990 arising from the contract were transferred to the plaintiff.

[27] In the case of *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58, the Federal Court decided that LLN was entitled to claim from the consumer any amount undercharged for electricity energy supplied notwithstanding that the undercharging was due to error or mistake by LLN and/or its agent/ servant. Thus the right enjoyed by LLN under the laws of Malaysia immediately prior to 1 September 1990 has vested in the plaintiff by virtue of s 3.

[28] Therefore it is right at law that the defendant should burden the loss of RM2,270,209.70 as a result of using electricity which have already been sold and delivered.

Issue 2 — Whether the plaintiff is entitled to claim from the defendant for an alleged 'under billed' electricity consumption due to the wrongly installation of the meter by the plaintiffs servants or/agents at the defendant's premises?

[29] Rule 3(1) of the Licensee Supply Regulations 1990 provides that 'A licensee may recover from a consumer any charges due to him in respect of the supply of electricity, or in respect of the supply and fixing of any electricity meter, supply line or electrical equipment'. Rule 11(1) goes on to say that 'The licensee shall provide and fix such meters as it consider necessary for the measurement of the supply of

energy to a consumer. Where additional meters are installed by the licensee at the request of the consumer the charge as determined by the licensee shall be paid by the consumer'.

[30] Rule 11(2) states that 'The reading of the consumer's meter shall be prima facie evidence of the amount of electrical energy consumed, provided that should the supply registered by the meter at any time is not equal to the energy consumed or the meter is not registering the actual consumption due to fault installation, the licensee may make a charge for the supply of energy'. Finally r 11(3) states that 'In the event that the supply of meters at any time is not equal to the demand, the licensee may make a fixed monthly charge for the supply of energy'.

[31] Therefore it can be concluded that the Licensee Supply Regulations 1990 permits the plaintiff to raise a claim against the defendant for the amount undercharged for the supply of electrical energy as stated in a similar unreported High Court case of *Hock Seng Company Sdn Bhd v Tenaga Nasional Berhad* [2000] MLJU 571 it was held '... Oleh itu, menurut peruntukan Peraturan-peraturan Bekalan Pemegang Lesen 1990 [khasnya peraturan (3) dan (12)] Defendan adalah berhak terhadap caj tambahan bagi penggunaan tenaga elektrik yang tidak atau gagal direkod dan Plaintif tidak boleh mengatakan atau menimbulkan alasan bahawa Defendan diestop daripada menuntut bayaran bagi penggunaan elektrik yang tidak direkod'.

[32] It must however be noted that the amended r 11(2) only allows undercharging of not more than three months from the date the consumer has been informed about being undercharged. The amended r 11(2) states that 'The reading of the consumers meter shall be prima facie evidence of the of electricity consumed, provided that in the event a consumer has been undercharged or overcharge as a result of:

(a) meter inaccuracy;

(b) malfunctioning of the meter or its associated installation or part thereof;

(c) incorrect meter reading;

(d) incorrect application of a meter multiplying constant;

(e) cross-connection of installation to differentiate accounts; or

(f) faulty installation,

the licensee shall make retrospective adjustments to the consumer's account in respect of consumption and demand for such period by taking into consideration the licensee's records, the consumer's consumption record and history, available technical evidence and other relevant circumstances to rectify such undercharged or overcharged situation:

[33] Provided that the period for any retrospective adjustment shall not exceed three months from the date the consumer has been informed about being undercharged or overcharged.'

[34] This amendment nevertheless become into force only on 15 December 2002 after this suit was filed and hence after the present cause of action arose. The amendment cannot be supposed to have been meaningless, and the fact that it was thought necessary to amend the rule in order to incorporate a limit on the amount of time for which the plaintiff can claim arrears indicates that no such limitation applied under the unamended rule.

[35] The amendment should be construed as a prospective and not retrospective provision. It is therefore clear that, at the time of breaches complained by the plaintiff the earlier rule would still be applicable. In this case the plaintiff was entitled to claim against the defendant the amount under charged.

Issue 3 — Whether the plaintiff is entitled to claim from the defendant an estimated amount instead of an actual amount?

[36] PW1 confirmed that the sum claimed for was based on the 'pro rata' calculation. PW1 went on to say that the pro rata calculation is one of the available methods of calculation for under billing. The other method is the 'percentage' calculation. PW1 also demonstrated during evidence that the amount claimed would have been higher had the 'percentage' calculation been adopted.

[37] It must also be noted at all times, the correctness of any of these amounts have not been challenged nor contradicted by the defendant.

[38] Moreover, the defendant had considered the low electricity charges in pricing its manufactured goods. The defendant would have been able to price its good lower than other manufacturers in the same field and monopolized the market thus making profit out of cheap electricity. Therefore, it can be concluded that the plaintiff is entitled to claim from the defendant an estimated amount instead of an actual amount.

Issue 4 — Whether the plaintiff was negligent in installing a faulty meter system so as to raise a set off?

[39] For the defendant to prove negligence, four ingredients must be established namely:

(a) the plaintiff owes the defendant a duty to take reasonable care;

(b) the plaintiff breached the duty;

(c) as a result of the breach, defendant suffered damage; and

(d) the damage suffered is not too remote.

See *Arab Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ong and other appellants* [2003] 1 MLJ 567 (at p 578). It is clear in this case that the defendant has not proven actual damage which is an essential ingredient in the sort of negligence and thus fails to prove negligence on the part of plaintiff towards the defendant. This can be seen in the case of *JR Munday Ltd v London County Council* [1916] 2 KB 331 where it was

held that 'Negligence alone does not give a cause of action, damage alone does not give a cause of action; the two must co-exist'.

[40] Since negligence is not proven, the defendant is not entitled to set off the plaintiff's claim for the undercharged electricity energy.

Issue 5 — Whether the plaintiff's claim is time barred

[41] Under the law of contract, time begins to run from the date of breach of contract. So when did the breach occur? In *Tan Boon Yen dan Iain-Iain lwn Maybank General Assurance Bhd* [2003] 5 MLJ 315 the principle which can be adopted in this case is that the date which the plaintiff's cause of action accrued was on the date when the defendant denied liability.

[42] According to the defendant the breach accrued in September 1990 from which the date the plaintiff is claiming for the alleged under billed amount. Nevertheless, this is not the date when the breach occurred but rather when the damage occurred.

[43] I am of the opinion that the breach occurred on 12 June 1998 ie when the defendant's solicitors informed the plaintiff's solicitors that the defendant was denying liability to pay the undercharged sum. Since the action was filed by the plaintiff on 5 September 1998, the action was not time barred.

CONCLUSION

[44] From the evidence by the witnesses, facts of the case and from parties' submissions, the court is of the opinion that the plaintiff has proven its case. Therefore the plaintiff's claim is allowed with costs.

Plaintiff's claim allowed.

Reported by Sally Kee